UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1996/SR.17
22 August 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1996, at 3 p.m.

Chairman: Mr. EIDE

later: Mr. LINDGREN ALVES

later: Mr. EIDE

CONTENTS

REVIEW OF THE WORK OF THE SUB-COMMISSION (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-13485 (E)

CONTENTS (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (continued)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

The meeting was called to order at 3.15 p.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1996/3, 4, 6 and 7; E/CN.4/1996/44)

1. Mr. WEISSBRODT, speaking first on agenda item 4, said he had already submitted some written remarks concerning her final report (E/CN.4/Sub.2/1996/6) to Mrs. Warzazi, Special Rapporteur on traditional practices affecting the health of women and children. One of the procedural conclusions he had drawn was that, in her continued monitoring of the topic, the Special Rapporteur might usefully refer to the work of the Committee on the Rights of the Child; for, in his view, issues such as female genital mutilation could be more easily tackled as a violation of the rights of the child. He also considered that the process of continued monitoring needed to be clearly distinguished from Mrs. Warzazi's pioneering study: the Commission might not be receptive to the idea of following up the final report with a continuation of that study, which had taken 10 years to prepare. A better approach might be for the Special Rapporteur to report again two years hence on new developments in the field of traditional practices, and thereafter biennially.

2. Turning to agenda item 3, he congratulated his colleagues on the quality of the discussions concerning the role of the Sub-Commission in reviewing country situations under agenda item 6. He wished to highlight the three main avenues the Sub-Commission should pursue in that regard. First, while its efforts in monitoring country situations were significant, many of its country resolutions under Economic and Social Council resolution 1235 (XLII) duplicated Commission and General Assembly actions, thereby squandering limited resources and politicizing its role. Perhaps the best way in which it could contribute to country reviews under Council resolution 1235 (XLII) and Commission resolution 8 (XXIII) of 16 March 1967 would be for it to focus on new situations and those that had received insufficient attention from other United Nations bodies. It would perhaps be impractical, given that a number of proposals for country resolutions were already pending, to eliminate all such duplication at the current session. However, in fulfilment of the minimum requirements of Commission resolution 1996/25, the Sub-Commission should now declare its commitment to act at future sessions only in regard to those countries on which the Commission had not adopted a resolution at its immediately previous session - unless of course there had been major new developments since that session requiring action by the Sub-Commission.

3. Secondly, the Sub-Commission should begin to explore another way of approaching its work under agenda item 6. Commission resolution 8 (XXIII) authorized it to discuss country situations and to report thereon to the Commission. But what form should such a report take? The resources required to produce a global report along the lines of those prepared annually by Amnesty International and the United States Department of State would be so prodigious as to require it to abandon many other useful functions. Mr. Lindgren Alves had offered some interesting ideas on ways of working towards a global report in the long term. One such way would be to draw up

a table of the sort suggested by Mr. Bossuyt, providing an overview of the 14 thematic reports of the Commission (the original purpose of which had been to avoid politicization of country resolutions). Such a table would reveal whether there were imbalances in those reports and gaps in their coverage, and would identify those countries in which significant problems arose in connection with a large number of thematic procedures. Those countries could then be made the subject of closer attention from both the Commission and the Sub-Commission. The task of preparing the table could be entrusted either to just two members, or to a working group: the latter alternative would be more costly, but would provide better regional balance.

4. Thirdly, the idea of a thematic table would not, pace Mr. Alfonso Martínez and Mr. Fan Guoxiang, make the Sub-Commission an appendage of or hostage to the Commission. It would still be able to adopt resolutions on emergency situations and could gradually develop the thematic table into a global report. It should not now hesitate to take that initial step, before deciding what further steps were needed.

5. Lastly, the Chairman might wish to consider the possibility of selecting a group of members of different persuasions as "Friends of the Chair", with a view to developing a proposal that would meet with the broad approval of the Sub-Commission as a whole.

6. Mr. ALI KHAN, speaking first on agenda item 4, noted from paragraph 62 of the annotations to the provisional agenda (E/CN.4/Sub.2/1996/1/Add.1) that the study by Mr. Chernichenko on recognition of gross and large-scale violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime had been shelved on the grounds that other bodies such as the International Law Commission were seized of the matter. In his view, the subject was a very important one that could make a valuable contribution to the promotion of human rights. Like others, he was aware of the work done by the International Law Commission on the question in pursuance of its mandate of codification and progressive development of international law, and of its work in drafting a statute of an international criminal court to serve as an additional forum in which to deal with international crimes. There was an urgent need to establish such a forum to impose sanctions on recalcitrant or delinquent States, and Mr. Chernichenko's study should therefore be continued. Indeed, if the rules so allowed, Mr. Chernichenko should be enabled to participate in the work of the other bodies seized of the matter, in the capacity of an expert or witness. There was no justification for putting his study into cold storage.

7. His next remarks touched on agenda items 3, 4 and 6. On the question of an annual global report, he believed that it might be possible to adopt the proposals made by Mr. Bossuyt if, in their capacity as independent experts, members were able to draw a clear distinction between the political aspects of human rights and human rights per se in their consideration of situations. Unfortunately, that might not prove possible in practice. He therefore wondered to what extent a global annual report would serve to arraign States. Mr. Bossuyt's idea should not be shelved indefinitely. Mr. Weissbrodt had made a valiant effort to keep it alive; and the Sub-Commission should now explore it further so as to give it shape and form in the future.

8. He had listened with rapt attention to Mr. Bengoa's attempt to analyse human rights from two angles, covering both globalization of human rights and the political aspects of the situation. He was a little disappointed that Mr. Bengoa had not driven the point home by pursuing that approach to its logical conclusion; for the result would have been a more forthright and practical suggestion. As for the question of a thematic table, he would have whole-heartedly endorsed Mr. Weissbrodt's suggestion, had it not been linked to the further proposal that that table should subsequently evolve into a global annual report. Nevertheless, the idea of some sort of chart synthesizing the data contained in the various thematic reports was one he could support.

9. Turning to agenda item 3, he said he doubted whether Mr. Hatano's proposals concerning a codification of the Sub-Commission's rules of procedure and guidelines were feasible; for it clearly emerged from his perusal of the rules of procedure of the Functional Commissions of the Economic and Social Council that the Sub-Commission was subject to the rules of procedure promulgated by the Economic and Social Council, and that, mutatis mutandis, those rules applied to the functioning of the Sub-Commission. Rule 77 stated that "only the Council may amend these rules". Unlike the Security Council, for instance, the Sub-Commission was not the master of its own procedures; and he had no doubt that should any conflict arise between Mr. Hatano's proposals and the rules of the Economic and Social Council, the latter would prevail. He himself favoured flexibility, reasonableness and fairness in procedural matters, with recourse to guidelines and precedent rather than a codified system of procedure. None the less, Mr. Hatano had made many excellent proposals that were worthy of consideration.

10. Mr. FL-HAJJÉ said he recognized that it was neither easy nor desirable to accuse a specific State in a draft resolution, and that the Sub-Commission did so only when it had exhausted all the other procedures available to it. A draft resolution on a country should be adopted only as a last resort. In that spirit, he agreed with those members who doubted the wisdom or feasibility of drawing up a catalogue of States in which violations were alleged to have taken place, in the absence of a decision by the Sub-Commission, the Commission or other bodies. Would it be wise for members to abandon their role as independent experts and to trigger a confrontation between States and non-governmental organizations (NGOs)? The two main qualities that members should exhibit were discretion and independence, and those qualities were incompatible with the publication of a document. Where a special rapporteur was reporting on a country, the Sub-Commission could of course refrain from adopting a resolution, in the interests of avoiding duplication, with the proviso that a further resolution could be adopted if there was a change in the situation. Item 6 was a core component of the Sub-Commission's work, and the question was, how to make its procedures more efficient and effective. He thus supported the proposal that a small group, consisting of one member from each geographical region, should meet briefly to pool all the ideas put forward and come up with a proposal on the basis of which a decision could be taken.

11. Mr. HATANO, speaking on agenda item 3, said that although he could not answer every question and criticism, he felt he should clarify his position with respect to the mandate of the NGOs. In provisional guideline A,

paragraph 3, he had proposed that NGOs should not "request the Sub-Commission to take action" for two reasons. Firstly, it could be assumed that when NGOs supplied information it was in the hope that the Sub-Commission would take certain action, so there was no need for them to explicitly request the Sub-Commission to take action. Secondly, NGOs had no mandate to "request" the Sub-Commission to take action, sometimes because the Sub-Commission was not in a position to comply with requests, and sometimes because they would be interfering in matters which were for the Sub-Commission to decide, such as the appointment of special rapporteurs. His paper had been amended so that it only suggested certain procedural provisions with respect to NGOs and government observers; the final draft would be drawn up in consultation with all parties.

12. Mr. ALFONSO MARTÍNEZ, speaking on agenda item 3, said it was important to remember that the draft resolution referred to earlier by Mr. Weissbrodt (E/CN.4/Sub.2/1996/L.5) was based on information made available as a result of the special procedures; unfortunately, the original objectives of those procedures had been watered down, leaving many countries with a deep-seated sense of unease over the results of the work of the Sub-Commission. He defended the special procedures because they helped to avoid the over-politicization of the already highly politicized area of human rights.

13. The thematic reports were generally based on information from the few NGOs with the resources to maintain worldwide networks, none of which, of course, were based in the third world. Those organizations did not request the Sub-Commission's permission to carry out their investigations; the only countries to take initiatives under the special procedures, though not the only countries where they were applicable, were African countries. That was why he was opposed to basing a new approach under agenda item 6 on the annual results of special procedures groups.

14. Turning to the details of the draft resolution, he questioned the usefulness of the purely arithmetical tabular report proposed in operative paragraph 2. He also felt that three of the six factors listed in operative paragraph 3 required the special rapporteurs to make value judgements, namely, on the extent to which a country was of concern in thematic reports, on a Government's willingness to cooperate and on any change in the severity of the human rights situation in a country. The work involved in addressing those points would be tremendous and the responsibility of making the judgments would be far beyond the mandate of the experts.

15. He also questioned whether the work could be done in only two weeks; three or four weeks seemed more reasonable to him. It was unacceptable to ask two experts to do the work of five in a reduced period of time; if the task was not going to be done properly, it should not be done at all. He also disagreed with the idea of the Chairman appointing the two rapporteurs, when so many divergent viewpoints had been expressed. Finally, he warned that to rush such an important debate would create more problems than it solved.

16. Mr. KUEHL (Observer for the United States of America), speaking on agenda item 3, wished to impress upon members his delegation's sense of urgency regarding reform of the Sub-Commission, and to emphasize the main point made by the Commission in its debate, namely, that Governments wanted the Sub-Commission to review its work and its mandate.

17. His delegation believed it was appropriate for the Sub-Commission to review and consider better ways of fulfilling its mandate; he urged the Sub-Commission to address all the concerns of the Commission, as stated in its resolution 1996/25, and not just concentrate on agenda item 6. His delegation strongly recommended that the Sub-Commission should spend more time on the matter, both in private and, if necessary, at the expense of more routine business. Further, not only thematic reports, but also country reports should be taken into consideration by the Sub-Commission.

18. Ms. WARZAZI, speaking on agenda item 3, said the Sub-Commission should not rush into decisions; general agreement was needed on three points, namely, streamlining, effectiveness and the preservation of the independence and identity of members of the Sub-Commission. They were not new ideas, but they required an evolution rather than a revolution in thinking. She personally was open to any suggestions which would improve relations between the Sub-Commission, NGOs and government observers, and which would avoid duplication. She agreed with Mr. Joinet that the Sub-Commission was not able to take effective action in cases of emergency, as even a resolution by the Sub-Commission could take eight months to reach the Commission. She therefore wondered if it would be possible to bypass the Commission and send Sub-Commission resolutions directly to the General Assembly. Finally, she expressed her agreement with Mr. Joinet on the questions of streamlining, saving time and secret ballots.

19. Mr. TEITELBAUM (American Association of Jurists), speaking on agenda item 3, referred to a document his organization had sent to the Commission on Human Rights in March 1996 (E/CN.4/1996/NGO/5), urging that the Sub-Commission should avoid carrying out studies which had already been carried out in the Commission or other relevant bodies, or which could be requested from the secretariat. For example, the World Health Organization had been working on the question of traditional practices since 1958, and a working group of the Commission had produced a report on it in 1986. The Sub-Commission should also avoid needlessly prolonging studies it had undertaken.

20. His organization urged the Sub-Commission to present an annual report to the Commission, as requested by it in resolution 1967/8, a full 29 years earlier. The agenda should include, on a permanent basis, freedom of expression, representative democracy and popular participation, fundamental rights which were currently in crisis throughout the world. He agreed with Mr. Lindgren Alves that more time should be devoted to economic, social and cultural rights, and a fairer balance needed to be struck in allocating the two categories of rights.

21. His organization believed that excessive recourse to confidentiality and secret ballots damaged the Sub-Commission's credibility and moral authority, reducing its transparency and increasing its lack of unaccountability. It was argued that secret ballots guaranteed the independence of the members, by shielding them from outside pressure, including that from the Government of their own country. However, the risk facing members who resisted pressure was, at worst, according to members of the Sub-Commission who had spoken out on the matter in the past, the loss of their job; and that could only happen if they were dependent on the support of a Government for their position. A secret ballot would not solve that problem, as it would be illusory to suppose

that Governments were not aware of how the experts voted. The impartiality and objectivity of the Sub-Commission and the independence of its members was, as the Commission had noted in resolution 1982/23, essential, and was to be achieved by avoiding the appointment of government officials to the Sub-Commission. The fear that pressure might lead to a member not being re-elected ignored the fact that to be a member of the Sub-Commission was not in itself a career or just a job, but a great responsibility that was by its nature temporary. Besides, if a member incurred the wrath of his or her own Government, there was nothing to prevent him being put forward for re-election by another country or group of countries if they thought that he should continue to be a member of the Sub-Commission.

22. On the question of members' personal safety, which would supposedly be enhanced by secret balloting, the risk a member ran for speaking out independently was infinitesimal in comparison with the risks run daily by those who risked, and often lost, their liberty and lives in the defence of human rights.

23. His organization did not wish to see members exposed to physical risk or inquisitorial surveillance by Governments, but wished rather to increase the credibility and moral authority of an effective and independent Sub-Commission.

24. Mr. FAN Guoxiang, speaking on agenda item 3, referred to written comments circulated by the observer for the United States of America, and agreed that the Sub-Commission should take into account the enormous complexity of drawing up a comprehensive report, though not necessarily for reasons of the time and resources needed to compile it.

25. The essence of the problem was whether or not there should be a new, automatic, institutionalized linkage between the independent Sub-Commission and other mechanisms. He wondered whether it could really be assumed that the conclusions of other bodies presented in tabular form would be automatically accepted, without a case-by-case discussion and possibly a vote. Special rapporteurs did not necessarily reach the same conclusions as the Sub-Commission; therefore the key issue was whether or not to maintain the independence of both the Sub-Commission and the experts.

26. Mr. GUISSÉ speaking on agenda item 3, stressed the importance of the studies carried out by the Sub-Commission. They not only supplied information to higher bodies, including the Commission, but also, when carefully argued and exhaustive, offered a testing ground for new ideas. The studies allowed input from all individuals and organizations working in the field of human rights to be considered, and, in return, were widely circulated by the same individuals and organizations, especially NGOs.

27. On the question of the independence of members and secret ballots, he pointed to the jury system, where total anonymity was observed in order to protect jurors and to give a clear verdict. Secret balloting gave credibility to decisions, ensuring that each member could consult his or her own conscience and avoid suspicions and insecurity. He therefore believed that secret ballots were the only way to reach objective and reliable decisions.

28. Mr. WEISSBRODT said that he strongly supported Mr. Guissé's arguments in favour of secret voting on issues falling under agenda item 6.

29. Mr. Fan Guoxiang had quoted a passage from the written comments of the observer for the United States of America that had not been read out at the meeting. He took issue with that statement in the passage to the effect that the reports of the rapporteurs and working groups of the Commission and the Sub-Commission were not intended to form part of a global overview. In his view, that was precisely their intention, particularly in the case of thematic reports on such issues as torture or disappearances. A table indicating the thematic reports in which individual States featured could, on an experimental basis, provide an interesting insight into the operation of the thematic procedures.

30. Mr. JOINET said that the representative of the American Association of Jurists had implied that the status of civil servant was incompatible with independence. If that argument was applied to the office of magistrate, it followed that there was no such thing as an independent judiciary. Secondly, even if the personal safety of members of the Sub-Commission was not currently under serious threat, circumstances might change in particular countries or a new member might be elected from a State where persons of equivalent status feared for their lives. At all events, he understood that there was only one NGO opposed to the principle of the secret ballot.

31. Mr. BOSSUYT said that his reference at the previous meeting to the preparation of a table had not implied any support on his part for the idea of compiling a global report on human rights. He had suggested that the table should be based on thematic reports because it would serve no purpose in cases where a country-specific report already existed. Moreover, the information provided in the table would not trigger an automatic mechanism. It would be for the Sub-Commission to decide whether any action was indicated. The whole idea of the table was to address agenda item 6 in a less arbitrary and selective manner.

32. Mr. ALFONSO MARTÍNEZ said he was not sure that the American Association of Jurists was the only NGO to oppose the principle of secret voting. He personally shared its opinion.

33. Mrs. PALLEY said she realized that as a national of a mature democracy she was in a privileged position when it came to choosing between public or private voting. She was very much in favour of privacy, however, because she realized that not everybody was so fortunate. Moreover, her own purely arithmetical research had convinced her that the statements made by experts did not always tally with their voting behaviour.

34. Mr. KUEHL (Observer for the United States of America) said that he had not made the remarks attributed to him by Mr. Fan Guoxiang and those remarks did not reflect his Government's opinion on the ideas that had been discussed at the current and previous meetings.

35. The CHAIRMAN, summing up the debate on agenda item 3, said that some proposals concerning rationalization of the agenda seemed to have secured a consensus. Opinions differed on issues of procedure, including the role of

NGOs and alternates, but there seemed to be agreement on the minor practical matter of providing two ballot boxes. The key issue was, of course, the implementation of Commission on Human Rights resolution 8 (XXIII), on which a wide range of proposals and counter-arguments had been tabled. He suggested that all experts who had ideas or had made recommendations on any of those subjects should submit them in writing. The Sub-Commission could then form an open-ended working group that would seek to overcome existing differences of opinion.

36. Mr. ALFONSO MARTÍNEZ asked whether the submissions were to focus on draft resolution E/CN.4/Sub.2/1996/L.5 and requested further information on the practicalities of the proposed procedure.

37. The CHAIRMAN said that the draft resolution was certainly the main focus of the existing divergence of views. As regards the practicalities, he agreed that further reflection might be necessary and suggested that the matter be deferred until the beginning of the next meeting.

38. Mr. Lindgren Alves took the Chair.

39. Mr. URRUTIA (Observer for Peru), speaking on agenda item 4, said that recent events in Peru should go a long way towards allaying the concern expressed by the Sub-Commission regarding the human rights situation in his country. The President of the Republic had submitted a bill to Congress providing for the establishment of a commission composed of the Minister of Justice, the Defender of the People (Ombudsman) and a highly regarded human rights activist. Its mandate would be to investigate cases of individuals who claimed to have been unjustly convicted or detained for terrorist offences and to request a presidential pardon where appropriate. It could also propose additional legislative measures to improve the unwieldy judicial review procedure. Persons granted a presidential pardon would not be declared innocent but would be released immediately. Such a procedure was considered more humanitarian than the alternative of remaining in prison while the review process unfolded. Moreover, the individuals concerned would retain the option of demanding a judicial review following their release. The commission would begin its proceedings 15 days after promulgation of the proposed act.

40. The Government of Peru had begun paying compensation to the relatives of the victims of certain human rights violations, for example in the La Cantuta case and cases where the responsibility of State officials had been reliably established by the Peruvian judicial authorities.

41. All the judicial institutions established under the 1993 Constitution were again operational. Congress had recently appointed a Defender of the People, thereby responding to one of the specific requests made by the Sub-Commission at its previous session, and had elected the seven magistrates who formed the Constitutional Court.

42. His Government had invited the Working Group on Arbitrary Detention to visit Peru at a date to be determined by the Group. It had also issued an invitation to the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, who would

visit the country from 9 to 13 September 1996, and the Minister of Justice had recently extended a similar invitation to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

43. Peru's strenuous efforts to guarantee human rights in its territory continued to be thwarted by terrorist activities. Where excesses had been committed in the fight against subversion, the perpetrators were individuals and were in no case pursuing a deliberate and systematic State policy.

44. He assured the Sub-Commission that any further views it expressed would be taken into account by his Government, which was cooperating with international bodies and had already achieved considerable progress in the area of human rights. He therefore urged the Sub-Commission to refrain from adopting a resolution on Peru.

45. Mr. KHALIFA said that the issue of international terrorism had been covered in paragraphs 97 to 109 of the Sub-Commission's report on its forty-seventh session (E/CN.4/1996/2). Was its omission from the annotated agenda of the current session (E/CN.4/Sub.2/1996/1/Add.1) inadvertent or deliberate? As a concomitant of such major evils of modern society as drug trafficking and organized crime and a phenomenon that was frequently motivated by fanaticism and suicidal despair, it was an issue that demanded the Sub-Commission's attention. The alleged blurring of the distinction in some cases between terrorism and guerrilla warfare was no justification for lack of action. The fear generated by terrorism was a deadly threat to the survival of democratic freedoms and a sound civil society. It was essential to explore the reasons for its recent proliferation and insidious corrosion of societies whose mood had turned sour.

46. Major policies were being drawn up to combat terrorism, like the recent decision to punish firms that did business with countries believed or claimed to be harbouring terrorists. Terrorism was a controversial issue, but the Sub-Commission had always taken up controversial issues. If left to flourish, terrorism could prove to be more perilous to mankind than ever thought. Nuclear smuggling was especially dangerous. The Director of the United States Central Intelligence Agency had predicted a tremendous growth of terrorism over the next 10 years. In particular, the defences against chemical or biological attacks by terrorists were inadequate. The Group of 7 plus Russia had recently met in Paris to discuss terrorism, while the Organization of Arab States had met to discuss the rising tide of religious extremism. It was interesting to note that sub-Saharan Africa remained relatively immune, the reason probably being that it had its share of civil wars and other armed disputes. Nevertheless, terrorism could exist side-by-side with those scourges, as in Sri Lanka.

47. In brief, terrorism had made the world a tough neighbourhood and certain countries had had to resort to tough measures and to exceptional legislation that went against established civil rights and guarantees. Such measures, however, were taken reluctantly.

48. The 25 recommendations reached in Paris by the Group of 7 covered many areas but did not get to the roots of the matter. Terrorism was not only a total denial of human rights but also a possible result of such a denial - an aspect of the matter that deserved to be explored.

49. When he had raised the issue of terrorism at the previous session he had wished to draw attention to the fact that the Sub-Commission had given it no attention. A draft declaration had been proposed but then postponed. While he did not support the idea of appointing a special rapporteur on the subject, it would be inexcusable if the Sub-Commission were to avoid debating the issue altogether. It should therefore be retained under agenda item 4.

50. The CHAIRMAN said that no mention was made of terrorism in the agenda because a former member of the Sub-Commission who had been due to prepare a working paper on it had subsequently not been re-elected and the working paper had therefore not been submitted.

51. Mr. CISSÉ (Secretary of the Sub-Commission) explained the circumstances which had led to the issue of terrorism and human rights not being specifically included in the Sub-Commission's present agenda.

52. Mrs. MBONU, commenting on the final report of the Special Rapporteur on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1996/6), noted that the Special Rapporteur had received almost no replies from Governments directly concerned by the traditional practices covered by the Plan of Action contained in document E/CN.4/Sub.2/1994/10/Add.1, with the exception of Guinea, Niger and the Sudan. Thanks were therefore due to the Governments of those three countries for the information supplied.

53. In Nigeria the Ministry of Women's Affairs and Social Development afforded ample opportunity for the implementation of official policy on the eradication of traditional practices harmful to the health of women and children. At the Federal level, the Ministry, in conjunction with the women's commissions of the individual States, had organized a workshop for the purpose of alerting women to those issues and of dealing with problems of widowhood that infringed women's rights. Nigerian law did not run counter to women's rights, but certain customary practices tended to violate them. Genital mutilation, although not widespread, was a case in point. The Ministry of Women's Affairs and Social Development was therefore organizing another workshop at the grass-roots level to sensitize traditional rulers and, through them, women and to identify customs that were beneficial to women while discarding those that were harmful.

54. The internationalization of the problems considered in the report and other problems of violence against women had reached its peak in 1995 when the Fourth World Conference on Women had taken a stand on the matter, spelling out physical, sexual and psychological violence occurring in the family, including the sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women. The Conference had also called on all Governments to condemn violence against women and to refrain from invoking any custom, tradition or religious consideration to justify it. It was gratifying to learn from the report that some universities were taking an interest in the practices concerned, and she hoped that agreement would be reached on their cultural origins.

55. The request made by the WHO Executive Board for additional extrabudgetary resources to sustain action at the national, regional and global levels deserved to be supported, since the countries where harmful traditional practices occurred were usually very poor. Education also played an important role, since if girls were educated to at least high-school level their perception of the issues involved would be positively affected, with a drastic reduction in the number of early marriages. The work done by UNESCO in that connection should therefore be encouraged.

56. She endorsed the Special Rapporteur's recommendations on the national and international action to be taken, especially the need to include the problem of harmful practices in functional literacy campaigns for women, the need to motivate religious leaders to condemn harmful traditional practices in their preachings, and the need for teaching materials in the campaign against harmful practices for primary and secondary schools to be prepared by individuals expert in both the subject-matter and the appropriate pedagogical and psychological methods, as well as the need for financial support from the United Nations for training personnel responsible for enforcing laws against sex-related discrimination and the need for material and financial assistance for government projects such as the establishment of databases and mobile publicity units.

57. Finally, since it was unlikely that the diehards in favour of female genital mutilation would give up the practice easily, special attention should be given to the education of birth attendants and midwives and to ensuring that they used the right equipment. Moreover, some of the materials submitted to the Sub-Commission by the Special Rapporteur could well be taken up in the preparation of the proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

58. Mr. EL-HAJJÉ, introducing his working paper on the promotion and protection of human rights by the exercise of democracy and the establishment of a democratic society (E/CN.4/Sub.2/1996/7) said that the subject-matter was of a very great interest to modern societies. Human beings had always thought that they were equal before the law and that any discrimination could only be arbitrary, and the idea of equality had been given significance, resources and guarantees in democracy, which had been taken up in numerous articles of the Universal Declaration of Human Rights and the International Covenants on Human Rights. Wisely, however, those instruments contained no specific information on the elements that constituted democracy, since democratic societies were in a constant state of flux and what was considered important at one point in time might be insufficient at another. His research among the classical Greek and Arabic writers on the subject, as well as among modern European, Chinese, Indian and Japanese philosophers, had led him to assume a common patrimony of mankind which placed man at the centre of all living concerns and concentrated all his riches in the simple yet beautiful, vibrant yet explosive concept of democracy, with its associated notions of morality, the public good, solidarity, dialogue and the rejection of violence. His working paper was essentially concerned with the identification of the characteristic features of the democratic society, what obstacles there were to it, and how it could be established. He hoped that it would be possible to appoint a special rapporteur at the Sub-Commission's current session so that a preliminary report giving some specific practical content to the International Bill of Human Rights could be submitted at its next session.

59. Mr. YOKOTA said that, as a former Special Rapporteur on the situation of human rights in Myanmar, he was convinced that the restoration of democracy was essential for the full enjoyment of human rights in Myanmar and earnestly hoped that the State Law and Order Restoration Council would finally keep its promise and transfer power to a democratically elected civilian government as soon as possible.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued)

Statement by the Chairman on the situation of human rights in Cyprus (continued)

60. The CHAIRMAN drew the Sub-Commission's attention to the following revised draft statement by the Chairman, which he invited it to adopt by consensus:

> "1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities deplores the violent clashes that took place in Cyprus during a demonstration on the 11th and a peaceful demonstration on the 14th of August 1996.
>
> 2. The Sub-Commission regrets very much the death of two unarmed Greek-Cypriot young men and the injury of many other persons, including United Nations peace-keepers, as a result of the Turkish forces allowing Turkish armed Cypriot civilians to pass through the United Nations buffer zone where they clashed with the demonstrators.
>
> 3. The Sub-Commission regrets the non-implementation of its resolutions on Cyprus relating to the return of refugees and displaced persons to their homes in safety and the full restoration of human rights."

61. The revised draft statement by the Chairman was adopted by consensus.

The meeting rose at 6 p.m.

UN

**UNITED NATIONS** **E**

**Economic and Social Council**

Distr.
GENERAL

E/CN.4/Sub.2/1996/SR.18
1 November 1996

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 10 a.m.

Chairman: Mr. EIDE

later: Mr. ALI KHAN

CONTENTS

REVIEW OF THE WORK OF THE SUB-COMMISSION (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-13506 (E)

The meeting was called to order at 10.20 a.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1996/3, 6 and 7, and E/CN.4/1996/44)

1. Mr. ALFONSO MARTÍNEZ recalled that at the previous session he had been against the Sub-Commission considering draft resolution E/CN.4/Sub.2/1995/L.47 under agenda item 10 and that the Sub-Commission had decided to defer consideration of the draft resolution until its forty-eighth session under item 4. He would once again be opposed to such consideration since the draft resolution in question concerned the human rights situation in a particular country, namely Peru, and it was only under item 6 that such situations could be considered. Nevertheless, he thanked the Ambassador for Peru for having supplied a large volume of data which would prove most useful for better assessing the human rights situation in his country.

2. Mrs. GWANMESIA described at some length the history of the creation of the United Nations and its various bodies and the adoption of the main United Nations human rights instruments including the International Bill of Human Rights and declared that the Bill, with its five constituent instruments, among them the two International Covenants, exerted a major influence over treaties, Constitutions and national legislation. The Judges of the International Court of Justice invoked its provisions, national and local courts often quoted the principles enshrined within it and the Programme of Action which was adopted following the World Conference on Human Rights in Vienna made frequent reference to the Universal Declaration of Human Rights. However, despite the existence of a Bill which granted equal treatment for all, discrimination against minority groups still persisted in most countries, provoking conflict throughout the world. She referred to the establishment in 1947 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, recalling that the principle of non-discrimination was enshrined in numerous international declarations and that the rights of minorities were also safeguarded by article 27 of the International Covenant on Civil and Political Rights. The United Nations had been commissioning studies and reports on the protection of minorities since 1960. They provided a basis for the very important activities of the various working groups of the Sub-Commission in contributing to the elimination of racial discrimination and the protection of minorities.

3. Turning to the question of the methods of work of the Sub-Commission and with a view to avoiding needless duplication, she suggested that the reports of the Commission on Human Rights should be communicated to members of the Sub-Commission in time to enable them to study them in detail. Alternatively, the Sub-Commission could hold a six-week session but only meet in the mornings. In the afternoons, members would thus have time to study all the documents presented to them by the Commission, governmental observers or NGOs, without necessitating extra expenditure on interpretation or secretariat services. Regarding the Sub-Commission's rules of procedure, she emphasized the need for a secret ballot, since that was the only way to ensure that votes

were not unduly influenced. She also enjoined governmental observers and NGOs to act in good faith and minutely verify all data communicated to members of the Sub-Commission so that they might base their decisions on accurate information.

4. She then made a number of observations concerning agenda item 4. She congratulated Mrs. Warzazi on her report (E/CN.4/Sub.2/1996/6) concerning traditional practices affecting the health of women and children and stressed the importance of educating the masses through the media, whether radio, television or the Internet, as well as through seminars and conferences. With regard to HIV/AIDS, she suggested that the Sub-Commission should join forces with other international organizations in stressing the importance of prevention and non-discriminatory treatment of patients. It had been proposed that a study should be made of various issues connected with the recognition as an international crime of gross and flagrant violations of human rights. She had personally been requested to conduct a study of juvenile justice. Such a study was indeed called for since children were classified as a group in need of protection.

5. She suggested that a special rapporteur should be appointed to conduct a study on the crucial issue of human rights and the environment. She maintained that the resolution adopted in 1995 concerning the traumatic effects of land-mines was insufficient. It was necessary to know what happened to victims of those mines. She also lamented the fact that the Special Rapporteur responsible for the study on population transfer had not managed to produce his final report through the secretariat's failure to render him the required assistance. Stressing the importance of the issue for the hundreds of thousands of people who were victims of such transfers, she requested that the problem be attended to and that the Special Rapporteur be permitted to complete his work so that the Sub-Commission might adopt appropriate recommendations. She also expressed the hope that the Sub-Commission would join with the International Youth and Student Movement for the United Nations in reiterating its request that a third United Nations Conference to Combat Racism and Racial Discrimination be organized, for those particular forms of human rights violation lay at the root of mankind's misery. It would be desirable if such a conference coincided with the fiftieth anniversary of the Universal Declaration of Human Rights.

6. Finally, turning to the question of democracy, she congratulated Mr. El-Hajjé on his report (E/CN.4/Sub.2/1996/7) and said that democracy should not be used for egoistic ends and that account should be taken of the traditional background of each society. With a view to achieving real democracy and peace in the world, it had to be remembered that in addition to rights, everyone had duties towards others. In that connection she quoted article 29 of the Universal Declaration of Human Rights, emphasizing the need for its provisions to be respected.

7. Mrs. MBONU recalled that the Commission had severely criticized the work of the Sub-Commission in its resolution 1996/25. In accordance with the Commission's request, the Sub-Commission had therefore decided to review its working methods, including the manner in which it approached its role of monitoring human rights situations under Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII). There were notably few experts in

favour of radical reform of the Sub-Commission's working methods, particularly regarding "country situations". Those who had recommended the drawing up of an annual report on the human rights situation based on information suppled by NGOs and special rapporteurs on countries, thematic rapporteurs and working groups of the Commission did not represent all the geographical regions. Other members of the Sub-Commission had vehemently opposed the proposal.

8. The raison d'être of the Sub-Commission was to carry out studies aimed at preventing discrimination and protecting the rights of vulnerable groups. The Sub-Commission's mandate had subsequently been expanded by Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII) permitting it to study the human rights situations in various countries. The role the Sub-Commission played in that connection had been criticized by many Commission members as well as NGOs which accused it of adopting politically-motivated resolutions by secret ballot. With the reforms proposed, the Sub-Commission's role would be that of a body of independent experts using reports prepared by special and thematic rapporteurs, special representatives and by working groups of a purely political body. In the same vein, the Sub-Commission would be requested to prepare an annual world report based on information supplied by NGOs. Would there not be a contradiction between the criticisms voiced and the solutions proposed?

9. The annual report being envisaged would at the least be unfavourable to third world countries. The thematic reports, which would be among the sources of information used to draw up the report, usually focused on those countries. Moreover, the degree of manoeuvrability of the experts in expressing their personal views on different situations would be drastically eroded considering that the five geographical regions did not view violations of human rights from the same perspective. Third world countries, particularly non-aligned countries, had indeed always stressed the interrelatedness and indivisibility of all rights, whether they be civil and political or economic, social and cultural, and that affected their perception of violations of those rights. It was thus unrealistic to expect 26 members from 5 different regions to reach consensus in the preparation of an annual report on the human rights situation worldwide. Furthermore, there were practical difficulties: how, for example, were the two or five special rapporteurs appointed to prepare the report to be chosen, and what purpose was the report to serve?

10. Finally, it had also been claimed that the functions of some members of the Sub-Commission in their various countries were incompatible with their functions within the Sub-Commission. Such criticisms assumed that if members of the Sub-Commission were national civil servants, that prevented them from carrying out their mandate within the Sub-Commission and eroded their independence. The argument did not appear particularly valid given that there were other members of the Sub-Commission who were professors of international law, for example, or judges in their own countries and thus also susceptible to influences of one kind or another. Pressure could also be exerted by NGOs. Whatever the case might be, the selectivity, discrimination and one-sidedness often displayed by some members of the Sub-Commission in their drafting of resolutions on country human rights situations clearly indicated that no member could boast total independence.

11. Mr. KHALIFA remarked that the subject of democracy was so immense that it had occupied the attentions of writers and researchers since time immemorial. There had not been a single political leader who had not proclaimed his love of democracy, yet all those who made an honest attempt to attain it encountered great difficulties. Democracy was, however, a prerequisite for political stability, and political stability was necessary for economic progress and sustainable development. Nevertheless, a mere semblance of democracy could have dire consequences. Elections, even multi-party ones, could serve as a launch pad for anti-democratic factions. It had, after all, been thanks to free elections that the Nazis had risen to power. There were also many such examples in the third world, and in developed countries, numerous secret transactions occurred before, during and after elections. Democracy, it had been shown, was a living entity prone to unwholesome developments. Democracy could be viewed from two perspectives: the first purely theoretical, the second involving studying real-life democracy in action. He suggested that Mr. El-Hajjé might continue his study of democracy and the creation of a democratic society and be guided more by the second approach.

12. He also lamented the omission of the subject "human rights and terrorism" from the annotated agenda; he assumed it to be due to the fact that no working document had been prepared on the subject. No member of the Sub-Commission seemed willing to resume the study which had previously been entrusted to Mr. Ramadhane. He wondered whether statements on the subject made at the forty-seventh and current sessions might not be compiled in one document which would serve as a working document, thus permitting the issue to be kept under review under agenda item 4.

13. Mr. ALI KHAN recalled that, shortly after the World Conference on Human Rights had drawn attention to the important issue of human rights and terrorism, it had been the Sub-Commission which had taken the lead by adopting resolutions on the subject. At its forty-sixth session, the Sub-Commission had also decided to request one of its members to prepare a study on human rights and terrorism. The fact that no progress had been made in that regard did nothing to enhance the credibility of the Sub-Commission.

14. At the forty-seventh session of the Sub-Commission, Mr. Eide had stressed the need for a new agenda which would cover violations by non-State actors. It was regrettable that the Sub-Commission had not even managed to deliberate the issue at its previous session for want of time and, even more so, that the agenda for the current session did not even refer to the issue.

15. Recalling that in its resolution 1996/47 on human rights and terrorism the Commission on Human Rights had requested the Sub-Commission to report on the issue at its fifty-third session, he said that it was time the Sub-Commission reached a decision on the matter. He thus proposed that a member of the Sub-Commission should be requested to conduct a study on human rights and terrorism. A preliminary report could be submitted at the forty-ninth session of the Sub-Commission, and a final report at its fiftieth session. He also proposed that the issue of human rights and terrorism should be made a separate agenda item or sub-item at the forty-ninth session.

16. Mrs. PALLEY recalled that at the previous session she had proposed that the Sub-Commission should be abolished and its functions transferred to the Commission. Upon reflection, however, she now considered that, although such a move would certainly result in considerable savings, it would not be in the interests of human rights. Moreover, those who were not declared advocates of the human rights cause might take advantage of any radical shift in the Sub-Commission's mandate.

17. In its resolution 1996/25, the Commission on Human Rights invited the Sub-Commission to review its methods of work with a view to improving efficiency and avoiding duplication with the Commission (para. 9). The Sub-Commission was perfectly capable of achieving that goal within its present mandate, which was sufficiently broad and flexible. The Sub-Commission had successfully set about rationalizing its agenda (para. 9 (a) of the same resolution), as shown by the progress it had made. Concerning the choice of subjects for studies (para. 9 (b)), she applauded the fact that the experts had maintained their sang-froid and had proposed several studies, some of which should be retained, such as the working document on terrorism and human rights proposed by Mr. Khalifa.

18. Regarding the functioning and mandate of the Sub-Commission's mechanisms (para. 9 (c)), she voiced concern over the length, complexity and rigidity of the procedure stipulated by Economic and Social Council resolution 1503 (XLVIII) under which the Sub-Commission was empowered only to request countries cited in communications to respond to allegations against them. Usually, the countries concerned claimed that the allegations were groundless, and the matter was shelved. The Sub-Commission should be in a position to request those States to substantiate their denials. Moreover, before being referred to the Economic and Social Council and thus made public, a situation should pass through four filters: the Working Group on Communications of the Sub-Commission, where decisions must be made by consensus, the Sub-Commission in closed meetings, the Commission's Working Group on Situations and, finally, the Commission on Human Rights in closed meetings. The Sub-Commission could thus propose that the first two filters should be removed. The Working Group on Situations would then truly possess an overall picture of allegations of human rights violations worldwide, and experts of the Working Group on Communications could devote themselves to other activities.

19. Concerning the need for the Sub-Commission to focus on the implementation of existing human rights standards and mechanisms (para. 9 (d)), she said that the idea of preparing an annual report on an experimental basis was most judicious, but that there was a misunderstanding which needed to be clarified. It had never been intended that the Group of Experts drafting the report should endorse the opinions of the Commission, which was a political body, or the conclusions of the special rapporteurs. The Group of Experts could equally well draw upon other sources of information it deemed relevant, such as replies from Governments. Moreover, the members of the Group should be designated by the various regional groups, and not by the Chairman. As for the need for enhanced cooperation with other human rights mechanisms and bodies (para. 9 (f)), she drew attention to the fact that the Sub-Commission already cooperated with the Committee on the Elimination of Racial Discrimination, but that it ought also to keep more

abreast of the work of other bodies and special rapporteurs. It should be possible for those experts who so wished to receive relevant documents at home, to allow time for proper perusal.

20. Regarding the composition of the Sub-Commission and criteria for membership (para. 9 (g)), she said that the independence of experts was a relative notion, and that there was little point in belabouring the point. In that connection, Mr. Alfonso Martínez had maintained that Governments had questioned the independence of the Sub-Commission at a meeting of the Economic and Social Council. According to her information, the Sub-Commission had never been the object of such an attack. The two Governments concerned had merely been surprised that an expert member of the Sub-Commission made frequent trips to Geneva for the purpose of conducting a particularly costly study, despite being his country's representative in Geneva.

21. Mr. GUISSE urged Mr. El-Hajjé to draft a working document on democracy which would preferably address not only civil and political rights, but also the need to fairly distribute the fruits of labour. Indeed, it came as no surprise that citizens were losing interest in democracy when they suffered from poverty and exclusion and when each day constituted a battle for survival.

22. He maintained that discussions on the "1503 procedure" should take place in a closed meeting in accordance with the principle of confidentiality.

23. Mr. ALFONSO MARTÍNEZ said he shared the point of view of the previous speaker regarding the duty on the part of the experts of the Sub-Commission to respect the confidential aspects of the "1503 procedure". In that connection, he stressed that it was always the same countries who attempted to dispense with the confidentiality of the procedure with a view to using communications submitted under the procedure concerning certain countries for the purposes of propaganda.

24. He drew attention to the fact that the members of the Working Group on Communications were not bound to take decisions by unanimity. Resolution 1990/41 of the Economic and Social Council regarding the creation of the Working Group on Situations contained no provision concerning the manner in which the Group should make decisions. It was thus quite within the power of the members of the Commission to fill in the gap as they saw fit. In any event, the matter did not fall within the remit of the members of the Sub-Commission.

25. The expert to whom Mrs. Palley had alluded was the person responsible for carrying out a study on the importance of the treaties, agreements and other constructive arrangements concluded between indigenous populations and States, namely himself. According to information obtained from the secretariat by the expert, the delegation of the United Kingdom had declared in substance at a meeting of the Economic and Social Council that the study in question was clearly of only secondary importance and that it was excessively expensive, and had queried why the writer of the report had requested reimbursement of travel costs to Geneva given that he represented his country in that city. The delegation of the Netherlands had apparently supported the remark. He wished to clarify that he did not represent his country in Geneva.

He occasionally visited the city as an expert member of the Sub-Commission, as an academic, on the invitation of an NGO, or to represent his country in the Commission on Human Rights. Many experts carried out other activities in Geneva after completing tasks entrusted to them by the United Nations without anyone finding fault. It was thus odd to say the least that a Cuban citizen had been the sole butt of the two aforementioned delegations.

26. Mr. LINGREN ALVES fully endorsed Mr. Khalifa's draft working document on terrorism and human rights. Indeed, it was a vital issue which warranted inclusion in the agenda of the following session.

27. Mr. CHERNICHENKO said that the study on democracy which Mr. EL-Hajjé had offered to prepare was of great importance and should not give rise to objections. It was to be hoped that the links between democracy which was first and foremost a political and legal concept, and respect for human rights would be emphasized, although, as Mr. Guissé had stressed, economic aspects must not be neglected.

28. It would also be helpful to have the summary records on agenda item 6 made available to experts.

29. The CHAIRMAN said that Mr. Guissé would reply to the question at the following meeting.

30. Mr. KHALIFA said that Mrs. Koufa, Mrs. Daes' alternate, was ready to prepare the working document on human rights and terrorism proposed by Mr. Ali Khan without financial implications. Mrs. Koufa possessed all the necessary qualifications and the Sub-Commission could prepare a draft decision to entrust her with the task.

31. Mrs. DAES supported Mr. Khalifa's proposal.

32. The CHAIRMAN said that the necessary draft decision would be prepared.

33. Mr. MAXIME urged Mr. El-Hajjé to continue his study of democracy and the creation of a democratic society despite the financial difficulties and lack of cooperation he had encountered in his work, given the great importance of the issue.

34. Mr. EL-HAJJE thanked all those who had assisted and encouraged him in his work. He explained that, in the first working document, he had attempted first and foremost to demonstrate every person's right to be protected in the exercise of basic human rights.

35. Ms. TIMBERLAKE (UNAIDS) said that the Joint United Nations Programme on HIV/AIDS brought together UNDP, UNESCO, the United Nations Population Fund, UNICEF, WHO and the World Bank in an effort to combat the epidemic.

36. The Joint United Nations Programme on HIV/AIDS had grown from the recognition of the fact that HIV/AIDS was not merely a health problem, but the consequences and cause of socio-economic discrimination and violations of human rights. It was thus no accident that 90 per cent of those infected with HIV or AIDS lived in developing countries, and that, in all societies it was

marginalized groups who proved the most vulnerable. It was thus up to the Sub-Commission with its mandate of preventing discrimination and protecting minorities to take action in response to the epidemic. More than 21 million adults and children were carriers of HIV, and 8,500 people, including 1,000 children, were infected daily. In 1995 alone, 1.3 million people had died from AIDS, including 300,000 children under five. Above and beyond those alarming statistics it was discrimination which made the situation of the sufferers all the more cruel.

37. She then drew the attention of the Sub-Commission to the link between HIV/AIDS and the denial of certain human rights, including the right of women and certain others to sexual autonomy, the rights of indigenous peoples, and the right to freedom of movement of those living with HIV/AIDS.

38. Paragraph 97 of the Platform for Action of the (Fourth) World Conference on Women in Beijing asserted the right of women to control their own sexuality and reproductive health and to be free from sexual violence and coercion. Any sexual relationship into which women or girls were forced, whether it constitute rape or sexual slavery in the context of marriage or forced relationship increased their vulnerability to infection as did any situation in which they had no possibility of negotiating safe sex or using contraception. Women's right to sexual self-determination had thus become a matter of life or death. Other groups denied sexual self-determination, such as homosexuals and transsexuals, were also profoundly affected by the epidemic. In more than 80 countries, the law still prohibited or regulated homosexuality between consenting adults. While matters of sexuality inevitably raise complex and sensitive religious and cultural issues, they also raised compelling human rights and public health concerns, given the current epidemic. Legislation prohibiting homosexuality hampered public health efforts to control the spread of the virus, and violated certain fundamental rights such as the right to privacy and to health, with the people concerned being denied access to AIDS information programmes and to treatment.

39. Indigenous people were gravely affected by the epidemic in a number of countries due not only to their lack of access to information and health services, but also to the fact that those services were ill-adapted to their needs and to the lack of preventive and support programmes geared to their own cultural, linguistic and social traditions.

40. Turning to freedom of movement, she said that more than 50 countries imposed restrictions concerning the entry and stay of people infected with HIV. Such measures affected thousands of people, a majority of whom were migrant workers, students, asylum-seekers, overseas employees and AIDS activists. Restricting freedom of movement based on HIV status alone constituted an act of discrimination and could not be justified on public health grounds. Finally, human rights imperatives such as claims for asylum or family reunion must prevail over economic concerns.

41. UNAIDS therefore requested the Sub-Commission to assist it in addressing such difficult problems. It thanked the Sub-Commission for supporting the Second International Consultation on HIV/AIDS and Human Rights to be held in Geneva in September 1996, which should lead to directives being adopted concerning the concrete measures which States could implement to redress human

rights violations related to HIV. For the epidemic to be controlled it was necessary to challenge traditional practices, cultural norms and deeply-imbedded prejudices which hampered the effective protection of the rights to life, health and dignity.

42. Mr. Ali Khan took the Chair.

43. Mr. KOMBA-KONO (African Commission of Health and Human Rights Promoters - CAPSDH) said that CAPSDH was gravely concerned about the spread of HIV/AIDS which had ravaged many countries and infected 10 million people in Sub-Saharan Africa, according to the International Conference on AIDS held in Vancouver (Canada) from 15 to 30 July 1996. There were 21.8 million people infected by HIV or AIDS, and 8.5 million had already died of the disease.

44. It was a well-known fact that 90 per cent of sufferers lived in developing countries and that 90 per cent of available resources for combating the disease was being spent in developed countries. That policy, which amounted to caring for the rich and excluding the poor, was inhuman and unjust. CAPSDH, through the African Association Against AIDS which coordinated its activities in African member countries, was attempting to promote preventative action through seminars and workshops to sensitize people to the problem and through dissemination of information on the disease and on measures to reduce the risk of infection. CAPSDH shared the opinion of the Director of UNAIDS that the Programme should address the care of HIV patients, not merely preventative measures, and that AIDS in the developing world was fundamentally a development problem.

45. CAPSDH hoped to participate in the UNAIDS programme for Africa with regard to research allocations, assistance to non-governmental organizations and access for African AIDS sufferers to existing treatments, currently beyond their reach due to the very high cost.

46. Mr. LITTMAN (World Federalist Movement) congratulated Mrs. Warzazi on her final report on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1996/6) and expressed the hope that her mandate would be renewed. The euphemistic expression "traditional practices affecting the health of women and children" actually meant the sexual mutilation suffered by two million young girls each year. Long considered a taboo subject, since they arose from specific social and cultural backgrounds, those ignominious rituals were the subject of a World Health Organization technical working group report marking a significant change. WHO asserted its determination to abolish all forms of genital mutilation in women and girls, and condemned its medicalization, namely the involvement of health professionals in those practices. Even if Governments tended to be reluctant to deal with such issues because of the political dimension, some had adopted legislative measures as in Sweden, France, the United Kingdom and Switzerland. In countries in Africa and the Middle East where such practices were widespread, Governments were too weak or divided on the issue to pass legislation. Nevertheless, the work of certain African NGOs, such as in the Inter-African Committee, was to be commended.

47. Mrs. Warzazi in her report stressed that traditional practices would not be eradicated in the absence of Government determination to act (para. 148) and that given the tenacity of such practices, religious leaders must be motivated to condemn them in their preaching, and thus contribute to dispelling erroneous beliefs (para. 177(k)). Although, according to the aforementioned WHO report, the Koran did not prescribe such practices, the former Grand Sheikh of Al-Azhar had issued a fatwa in 1981 according to which circumcision was obligatory and excision "recommended". It was to be hoped that the current Grand Sheikh who was more moderately inclined, would be encouraged by the Egyptian Government, and perhaps also by the members of the Sub-Commission, to issue a new fatwa more in line with the true Islamic position.

48. He denounced the position of a jurist and member of the Swiss Institute of Comparative Law in Lausanne, who, at a recent symposium at Lausanne University, had drawn an insidious parallel between circumcision and excision. Such an aberration could only hamper efforts to eradicate excision, a cruel Pharaonic tradition which should have long been defined as torture, if not a crime against humanity.

49. Mr. Eide resumed the Chair.

50. Mr. URRUTIA (Observer for Peru) announced the approval by the Peruvian Congress of the previously mentioned bill put forward by the President of the Republic proposing the establishment of a committee to review court decisions. The committee was to commence its work in the near future.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1996/SR.19
23 August 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 19th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 3 p.m.

Chairman: Mr. EIDE

CONTENTS

ELECTION OF OFFICERS (continued)

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-13521 (E)

The meeting was called to order at 3.25 p.m.

ELECTION OF OFFICERS (agenda item 1) (continued)

1. The CHAIRMAN said that in the absence of Mr. Fix Zamudio, who had been called back to Mexico for consultations with his Government, Mr. Lindgren Alves had served as Vice-Chairman. On his return, Mr. Fix Zamudio had expressed the desire that Mr. Lindgren Alves should continue as Vice-Chairman for the remainder of the session.

2. If there was no objection, he would take it that the Sub-Commission agreed to the formal election of Mr. Lindgren Alves to the post of Vice-Chairman.

3. It was so decided.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS

4. Mr. CHERNICHENKO said that he wished to place on record his view that since the Sub-Commission's resolutions concerning individual countries which repeated the resolutions of the Commission on Human Rights and other higher bodies inevitably politicized the work of the Sub-Commission and served no purpose whatsoever, he considered that it was pointless to support such resolutions. That did not, of course, affect his highly negative assessment of the actions of Governments that violated human rights.

5. Mr. JOINET observed that at least that meant that when the Sub-Commission adopted resolutions that were not before the Commission, its work was not politicized.

6. Mr. CHERNICHENKO said in response to a request for clarification by Mr. ALFONSO MARTÍNEZ, that he could not say how he would vote on individual resolutions although he could say that his general position would be reflected in his vote.

7. Mr. BOSSUYT proposed that when there was a request for a vote on resolutions, oral or written amendments, and related procedural issues the vote should be by secret ballot.

8. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission accepted the proposal.

9. It was so decided.

10. Mr. ALFONSO MARTÍNEZ said that although he accepted the consensus, he nevertheless wished put on record his opposition to the proposal.

11. Mr. YIMER proposed that introductions to draft resolutions should be dispensed with to the extent possible.

12. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission accepted Mr. Yimer's proposal.

13. It was so decided.

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.2

14. Mr. WEISSBRODT introduced a revision to draft resolution E/CN.4/Sub.2/1996/L.2. At the end of operative paragraph 5, the list of issues should be deleted, so that the paragraph now read:

> "5. Encourages the permanent status negotiations begun pursuant to the Declaration of Principles on Interim Self-Government Arrangements;".

15. He said that the draft resolution was partially a response to draft resolution E/CN.4/Sub.2/1996/L.3. A similar duo of resolutions had been adopted the previous year. The proposed resolution used an even-handed approach to encourage all parties to foster a comprehensive, just and lasting peace in the Middle East.

16. Mr. EL-HAJJÉ said he wished to become a sponsor of the draft resolution.

17. The draft resolution, as orally revised, was adopted.

18. Mr. KHALIL said that although the resolution just adopted contained many positive points, it did not address the reality of the problems currently facing the peace process in the Middle East, where over 5,000 Palestinians were still in prison and signed agreements were being challenged. He would have liked to see some reference to Commission on Human Rights resolutions 1996/2, 3, 4 and 5, which referred to other important elements in the peace process.

19. With reference to the change in operative paragraph 7 from last year's "State of Israel" to the "Government of Israel", he took it that the change did not imply that agreements entered into by a Government on behalf of a State were not binding on that State.

20. Mr. ALFONSO MARTÍNEZ agreed with Mr. Khalil that the resolution should have made some reference to the dangers facing the peace process, and that the Sub-Commission should be careful to take any future developments in the region into account when dealing with the issue at its next session.

21. Mr. GUISSÉ said that the revision had effectively removed potential areas of disagreement, but that side-stepping difficult issues was a step backwards as far as the peace process was concerned.

Draft resolution E/CN.4/Sub.2/1996/L.3

22. Mr. WEISSBRODT said that the draft resolution represented a one-sided view of developments in the Middle East. The extensive reprinting and distribution of United Nations documents requested in paragraph 10 would be a waste of resources.

23. He proposed two amendments to address problems regarding the Palestinian Authority, and to make the draft resolution slightly more balanced. The first amendment would consist of a new eighth preambular paragraph reading:

> "Concerned at emerging human rights violations of Palestinians living in the territories administered by the Palestinian Authority,".

The second amendment would be in the form of a new operative paragraph reading:

> "11. Calls upon the Palestinian Authority:
>
> (a) To comply with all current international norms in the field of human rights, particularly relating to (1) freedom of expression, (2) treatment of detainees, and (3) administration of justice;
>
> (b) To provide greater access to its prisons and interrogators through international organizations;
>
> (c) To continue its cooperation with the advisory services offered by the Centre for Human Rights with a view to fostering human rights institutions."

24. Mr. ALFONSO MARTÍNEZ sought clarification on the exact meaning of "emerging human rights violations"; he asked if it implied that human rights violations were already taking place in the territories. He also asked if Mr. Weissbrodt would vote for the resolution if the sponsors accepted the amendments.

25. Mr. GUISSÉ said that the Palestinian State had only recently been established after years of struggle, and was in the process of consolidation; it needed time to set up the institutions necessary to safeguard all human rights in its territory. Without in any way condoning human rights violations, he said that it was normal to allow newly created States a transitional period to become firmly established. Therefore, as a sponsor of the draft resolution, he could not accept the proposed amendment, which would distort it. He proposed that consideration of the draft resolution should be deferred to allow time for further consultations.

26. Mr. EL-HAJJÉ agreed with Mr. Guissé's proposal, especially as it appeared that some text had inadvertently been omitted from paragraph 8.

27. Mr. WEISSBRODT, when pressed by Mr. ALFONSO MARTÍNEZ for an answer on how he would vote if his amendments were accepted, said he would decide how he would vote only when the final text was proposed, and that in any case he was not required to reveal his vote in a secret ballot. He was very willing, however, to enter into consultations with the sponsors, and offered to change the wording in his proposed amendment from "emerging human rights violations" to "reports of human rights violations" in the new eighth preambular paragraph. He was not trying to suggest that the human rights situation under the Palestinian Authority was critical, and was surprised at the resistance of the sponsors to language that was broadly similar to that used in the previous year's resolution.

28. Mr. JOINET said that he had not sponsored either resolution on the Middle East at the current session because he felt that, in the light of recent developments, the Sub-Commission's continued inability to find sufficient common ground to produce a single resolution on the subject detracted from its credibility. He suggested that Mr. Weissbrodt and Mr. El-Hajjé should meet at the beginning of the next session to draft a resolution that would be acceptable to all.

29. Mr. ALFONSO MARTÍNEZ said that however important it might be to achieve a consensus, the Sub-Commission's credibility depended, in his view, on factors of far greater import than whether or not it could agree on a single resolution on the Middle East. He noted that the amendment proposed by Mr. Weissbrodt contained a number of points that had not figured in resolution 1995/9.

30. Mr. EL-HAJJÉ said that while nobody disputed the desirability of achieving peace in the Middle East, the Sub-Commission could not overlook such continued violations of human rights as detention without trial, demolition of houses and confiscation of land. Two separate resolutions were necessary to address two very different dimensions of the same situation.

31. Mr. WEISSBRODT suggested that his proposed amendment, as modified, should be put to the vote.

32. Mrs. WARZAZI, supported by Mr. JOINET, moved that the Sub-Commission should defer consideration of the draft resolution in order to allow time for consultations.

33. It was so decided.

Draft resolution E/CN.4/Sub.2/1996/L.4

34. Mr. GUISSÉ said that the draft resolution was very similar to resolution 1995/10 and was designed to reassure the population of Kosovo that their plight had not been forgotten.

35. Mr. EL-HAJJÉ, a sponsor of the draft resolution, suggested that subparagraph (e) of the fourth preambular paragraph should be deleted and that the first line of operative paragraph 6 should be amended to read "Calls upon the States Members of the United Nations not to recognize [...]."

36. Mr. CHERNICHENKO said that he did not agree with the content of the draft resolution. The human rights situation in Kosovo was admittedly not ideal but a far more balanced approach was required, particularly in recognition of the ongoing cooperation between the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the United Nations High Commissioner for Refugees (UNHCR). He had very serious doubts about operative paragraph 6, even with Mr. El-Hajjé's proposed revision. He failed to see what practical gain could be derived from urging United Nations bodies or member States not to recognize the legal effects of the Citizenship Law. Moreover, he could think of corresponding legislation in many other States that was flagrantly discriminatory and reserved the right to encourage non-recognition of the effects of that legislation if the draft resolution was adopted in its existing form.

37. Mr. WEISSBRODT said that he had sponsored the draft resolution on the understanding that certain revisions would be made: deletion of subparagraph (e) of the fourth preambular paragraph and insertion of the phrase "and to apply all other legislation without discrimination" at the end of operative paragraph 2 (a). He shared Mr. Chernichenko's doubts about operative paragraph 6 and suggested that it should be deleted.

38. Mr. BOSSUYT, a sponsor of the draft resolution, said that he supported Mr. Weissbrodt on all three points.

39. Mr. EL-HAJJÉ said that the omission of the phrase mentioned by Mr. Weissbrodt at the end of operative paragraph 2 (a) had been an oversight. He agreed with the proposal to delete operative paragraph 6.

40. Mrs. WARZAZI suggested that the word "reporter" in the French version of operative paragraph 2 (a) should be replaced by the word "abroger" in order to bring it into line with the English version.

41. The CHAIRMAN said he took it that the Sub-Commission wished to delete subparagraph (e) of preambular paragraph 4 and operative paragraph 6 and to amend operative paragraph 2 (a) in the light of the proposals by Mr. Weissbrodt and Mrs. Warzazi.

42. It was so agreed.

43. A vote was taken by secret ballot.

44. At the invitation of the Chairman, Mr. Alfonso Martínez and Mr. Yimer acted as tellers.

45. The draft resolution was adopted by 15 votes to 4, with 5 abstentions.

Draft resolution E/CN.4/Sub.2/1996/L.5

46. Mrs. MBONU said that the draft resolution raised a large number of problems for her, as she had already explained at the previous meeting.

47. Mr. GUISSÉ said that he also had difficulties with the text.

48. Mr. BOSSUYT explained that the draft resolution had been submitted under agenda item 6 because it could affect the way in which other draft resolutions submitted under that agenda item were dealt with, but it had also been discussed under agenda item 3. More thought would obviously have to be given to it. He therefore suggested that further consideration of the draft resolution should be postponed until later on in the session.

49. After a discussion in which Mr. GUISSÉ, Mr. BOSSUYT, Mr. YIMER, Mr. ALFONSO MARTÍNEZ, Mr. FAN Guoxiang, Mr. KHALIFA, Mr. CHERNICHENKO and Mr. LINDGREN ALVES took part, Mr. BOSSUYT announced that the draft resolution would be withdrawn, although he might submit a similar text under agenda item 3.

Draft resolution E/CN.4/Sub.2/1996/L.6

50. Mr. BOSSUYT proposed that the word "voluntary" should be inserted before the word "return" in the first line of paragraph 8. Otherwise, he hoped that the draft resolution would be adopted without a vote.

51. Mrs. WARZAZI noted that in paragraph 3 the draft resolution again requested the Secretary-General to arrange for the necessary inquiries to establish responsibility for the attack committed on 6 April 1994. However, the Secretary-General had already drawn up a report and it had been submitted to the Security Council, whose members had decided to keep it to themselves. Thus the Secretary-General should be requested, not to make inquiries, but to publish the report.

52. Mr. BOSSUYT explained that there was some confusion between the situation with regard to Rwanda and the situation with regard to Burundi. The report to which Mrs. Warzazi had referred had been requested by the Secretary-General on the assassination of the President of Burundi on 21 October 1993 and the massacres that had followed. The report had been transmitted some time previously to the Security Council, which had only recently authorized its publication. There was no report by the Secretary-General on the attack on the aircraft carrying the Presidents of Rwanda and Burundi on 6 April 1994, and that was why the Secretary-General was again being requested to arrange for inquiries to be made. Moreover, the general in charge had not been authorized by the Secretary-General to give evidence before a Belgian military court.

53. The draft resolution, as orally revised, was adopted.

Draft resolution E/CN.4/Sub.2/1996/L.7

54. Mr. BOSSUYT said that paragraphs 1 and 2 needed to be amended because, since the draft resolution had been submitted, the Security Council had authorized the publication of the report in question. He therefore proposed, on behalf of the sponsors, that the beginning of paragraph 1 should read:

> "Welcomes the publication authorized by the Security Council of the report ...", while paragraph 2 should begin
>
> "Hopes that the publication of this report will make it possible to remove ...".

55. Mr. YIMER said that the draft resolution was by and large acceptable to him. However, he could not agree to certain paragraphs. In fact, the resolution on Burundi adopted by the Committee on the Elimination of Racial Discrimination (CERD) seemed better than the one before the Sub-Commission.

56. In the sixth preambular paragraph the word "Noting" implied indifference and was therefore inappropriate to describe the Sub-Commission's response to the rejection of the framework agreement by extremists. "Deploring" or "Deeply deploring" or "Condemning" would be better. The paragraph should either be deleted or amended along those lines. Moreover, in the eighth preambular paragraph the words "had resulted" created some confusion

as to the relationship between the failure of the process of democratization and the unconstitutional manner in which Pierre Buyoya had usurped power. A clearer wording would be appreciated.

57. With regard to paragraph 5, he noted that CERD supported the economic sanctions imposed on Burundi. It was therefore surprising that two different United Nations bodies should take opposing stands on the issue. In any case, the regional summit meeting that had imposed the sanctions had made it clear that relief supplies for refugees and displaced persons would be allowed through. The Sub-Commission should therefore not express concern at the situation, and the paragraph should be reworded accordingly.

58. Mr. GUISSÉ endorsed Mr. Yimer's remarks. Since the situation was not very clear, any tendentious resolution by the Sub-Commission could do harm. He was therefore unable to support the text as it stood.

59. Mrs. WARZAZI said that it was important that any resolution adopted by the Sub-Commission should not be interpreted as support for one group or another. Furthermore, it might be advisable to omit the sixth preambular paragraph because it would not be appropriate for the Sub-Commission to adopt a text which might run counter to a text adopted by CERD, which had expressed its full support for the Arusha agreement. The beginning of paragraph 5 should be amended to read:

> "5. Expresses the hope that the economic sanctions will not endanger the already highly precarious situation ...".

60. Mr. BOSSUYT said that he could accept the new wording for the beginning of paragraph 5 proposed by Mrs. Warzazi. With regard to the eighth preambular paragraph, there seemed to be some misunderstanding concerning the words "which had resulted in the first free elections being held in 1993". It was not the "failure" which had led to those elections, but the "democratization of Burundi public life". However, since some confusion had arisen, he proposed that the words "which had resulted in the first free elections being held in 1993" should be deleted. A neutral wording had been used in the sixth preambular paragraph because it referred to an intervention by foreign troops, a matter on which the Sub-Commission ought not to pass any judgement. The best solution would be to delete that paragraph.

61. The draft resolution, as orally amended and revised, was adopted by consensus.

Draft resolution E/CN.4/Sub.2/1996/L.8

62. Mr. AL-DORY (Observer for Iraq) said that the draft resolution was based on an incorrect view of the situation in his country and was dependent on information and allegations that needed to be validated. For instance, it was not true that military attacks with heavy artillery were being made on Kurdish areas, which were, in any case, under foreign protection. Moreover, the draft resolution lacked balance because it made no reference to any positive steps such as the recent referendum and elections, the abolition of capital punishment or the release of political prisoners. While in the preamble a reference was made to the suffering of the people of Iraq and to the danger

of a deterioration in the health situation, it was not made clear that all the suffering of the people of Iraq, from north to south, was caused by the continuation of the economic embargo.

63. The operative part of the draft resolution lacked credibility and precision. For instance, how could it happen that the Government of Iraq was putting the northern areas under siege when it had already withdrawn from them? Moreover, the decrees mentioned in paragraph 6 had been abolished, so there was no justification for mentioning them.

64. The deployment of human rights monitors mentioned in paragraph 1 was unacceptable because it would amount to a violation of Iraq's sovereignty and interference in its internal affairs. In paragraph 2 mention should be made of the memorandum of understanding on the oil-for-food formula reached between Iraq and the United Nations, and of the party that had been responsible for postponing its application. With regard to paragraph 3, it was doubtful whether it was within the Sub-Commission's competence to request a State to withdraw its military forces from any area of its own territory. The terrorist acts against United Nations personnel had to be seen in the light of inter-Kurdish fighting and outside interference in the northern areas of the country over which the Government had no control. The internal embargo mentioned in paragraph 4 had not been confirmed by many international institutions. The Special Rapporteur had received positive treatment from the Government and had been invited to visit Iraq, as had happened in 1992. However, he had then done everything possible to abuse his position, in particular by providing a pretext for dividing the country and destroying its national unity, with potentially dangerous consequences for the whole region, and for changing the regime. His Government hoped that members of the Sub-Commission would not be influenced by the pressures brought to bear by certain States, since, despite the Special Rapporteur's activities, the Government of Iraq had continued to cooperate with the full range of human rights institutions. It therefore hoped that the draft resolution would be rejected.

65. Mrs. WARZAZI said it was regrettable that the sponsors of the draft resolution had apparently failed to consult the observer delegation directly concerned before submitting their text for consideration. That text would have gained in impartiality and objectivity had it reflected certain positive measures taken by the Government of Iraq. Sponsors of draft resolutions on countries must always consult all the parties involved: members, NGOs, and the countries concerned.

66. A vote was taken by secret ballot.

67. At the invitation of the Chairman, Mr. Ali Khan and Mr. Weissbrodt acted as tellers.

68. The draft resolution was adopted by 11 votes to 6, with 7 abstentions.

Draft resolution E/CN.4/Sub.2/1996/L.9/Rev.1

69. Mrs. MBONU said she was encouraged by the fact that, for the first time in the nine years she had been attending the Sub-Commission, the observer delegation of the Islamic Republic of Iran had expressed concern at

allegations of human rights violations in its country. Of course, the situation of human rights in that country still left a great deal to be desired. Nevertheless, there had been a few positive developments. It was unfortunate that those developments were not reflected in the draft resolution, the tone of which was, as usual, strongly condemnatory. The Government should be congratulated on those developments and urged to take further positive measures; the role of the Sub-Commission was not to castigate, but to prevail on Governments to cooperate with it. Too much condemnation and too little encouragement would simply cause the Government to withdraw into its shell.

70. Mr. JOINET said it was true that the reports of the Special Representative and the thematic rapporteurs cited a few examples of positive measures taken. More often, however, they cited allegations of human rights violations - and indeed, not just allegations, but proven instances of such violations. Clearly, the draft resolution should cite established facts rather than mere allegations. He therefore proposed that, in the sixth preambular paragraph, the words "Gravely concerned at allegations of" should be replaced by the words "Gravely concerned at reports of". For the same reason, in paragraph 1, the word "alleged" should be deleted.

71. Mr. WEISSBRODT said he supported the proposed amendments. Furthermore, in the penultimate preambular paragraph, he proposed replacing the word "murders" by the word "killings".

72. Mr. BOSSUYT said he thought the proposed amendments would be acceptable to all the sponsors.

73. Mrs. PALLEY said that, particularly in view of comments made concerning improvements in the situation of human rights in the Islamic Republic of Iran, she was not in favour of Mr. Joinet's proposed amendments, which would have the effect of further harshening the wording of the draft resolution. In the interests of time saving, the best course would be for her to withdraw her sponsorship of the draft resolution.

74. Mr. ALFONSO MARTÍNEZ requested a vote on the draft resolution.

75. Mr. ZIARAN (Observer for the Islamic Republic of Iran) said that in spite of the compelling arguments put forward to the effect that the best way in which the Sub-Commission could contribute to the promotion of human rights would be for it to depoliticize its work and concentrate on new developments, the Sub-Commission was yet again reacting to politically motivated interests. The draft resolution on the situation of human rights in the Islamic Republic of Iran (E/CN.4/Sub.2/1996/L.9/Rev.1) was a case in point: it ran counter to the standards, criteria and guidelines laid down by the Sub-Commission and the Commission. Thus, Sub-Commission resolution 1 (XXIV) of 13 August 1971 clearly stated that communications were admissible only if they were considered with the replies of the Governments concerned, reliably attested, not politically motivated and not based exclusively on reports disseminated by mass media, and if domestic remedies had been exhausted. Those originating the allegations should have direct and reliable knowledge of the violations, should act in good faith in accordance with recognized principles of human

rights, and should not resort to politically motivated stands. Paragraph 8 of Commission resolution 1992/66 reaffirmed that the Sub-Commission should make a thorough examination of information concerning alleged human rights violations. Pursuant to Sub-Commission decision 1995/115, reliable sources, including the reports of Special Rapporteurs and Chairmen-Rapporteurs of Working Groups of the Commission, should be taken into account in the examination of agenda item 6.

76. The allegations referred to in the draft resolution failed to meet any of those criteria. The text was mainly based on unsubstantiated and groundless allegations provided by a terrorist organization that was commissioning terrorism with impunity from a neighbouring country. At any rate, his delegation's request that the sponsors should provide it with information confirming the reliability of those allegations had thus far met with no response.

77. The year 1996 had seen the publication of two reports by thematic rapporteurs and one report by the Special Representative on the situation of human rights in the Islamic Republic of Iran. Those reports could constitute an objective basis for consideration by the Sub-Commission of the situation of human rights in his country. The Sub-Commission had that basis to hand: it could trust its own special rapporteurs and special representatives. Yet the sponsors of the draft resolution had overlooked those reports.

78. In paragraph 126 of his report (E/CN.4/1996/59), Mr. Maurice Copithorne, the Special Representative, stated that "The Islamic Republic of Iran is a dynamic society. There is clearly a range of opinions on most issues facing the society, and in many areas there is evidently active and fairly open debate. Arguably, this could be a prelude for significant change." In paragraph 129 of that report, he also acknowledged the cooperation of the Government of the Islamic Republic of Iran in the first six months of his mandate. In paragraph 94 of his report on religious intolerance (E/CN.4/1996/95/Add.2), Mr. Abdelfattah Amor, the Special Rapporteur, referring to the recognized non-Muslim religious minorities, stated that he "believes that their situation as a minority is [...] apparently satisfactory ...". In paragraph 103 of his report, he stated that "... the situation of the recognized Muslim and non-Muslim minorities appears to be fairly satisfactory". Those observations should be compared with the provisions of the draft resolution now before the Sub-Commission.

79. That draft resolution, if adopted, would discredit the Sub-Commission. It was regrettable that, in spite of the financial crisis afflicting the United Nations, valuable financial resources were being squandered on the publication, translation and distribution of baseless allegations. The draft resolution also sent out a wrong message, namely, that it made no difference whether a Government cooperated with or refused to respond to requests by special representatives and special rapporteurs to be permitted to make visits. It appeared that their reports were prepared merely for subsequent consignment to the archives. That trend, if continued, would undermine incentives for Governments to cooperate. He therefore appealed to members to vote against the draft resolution.

80. Mr. LINDGREN ALVES said that while progress made in the situation of human rights in the Islamic Republic of Iran was admittedly slight, it should nevertheless be encouraged. Yet the draft resolution, after welcoming the cooperation extended by the Government, went on to declare itself "gravely concerned" at a whole range of alleged human rights violations. In his view, it should at most "take note" of those allegations; for to go further would be to prejudge the situation. Likewise, some reference to "allegations" should be retained in paragraph 1.

81. Mr. JOINET said that the purpose of his proposed amendments had not been to render the tone of the draft resolution harsher, but rather to reflect the fact that, although (to take just one area as an example) there did not appear to be generalized persecution of religious minorities, some proven instances were nevertheless cited by the Special Rapporteur, in addition to a large number of as yet unsubstantiated allegations. He took the point, however, that if the Sub-Commission was too stinting in its encouragement, the Iranian Government might simply decline to cooperate further.

82. The CHAIRMAN said that, if he heard no objection, he would take it that the Sub-Commission wished to continue its consideration of draft resolution E/CN.4/Sub.2/1996/L.9/Rev.1 at its next meeting.

83. It was so decided.

The meeting rose at 6.20 p.m.